

Internal Revenue Service
MEMORANDUM

CC:DOM:P&SI:8
BWeberman SPR-115904-98

date: **SEP 29 1998**

to: Director, Excise Taxes
Assistant Commissioner (Examination) OP:EX:ST:E

from: Ruth Hoffman
Senior Technician Reviewer, Branch 8
Assistant Chief Counsel (Passthroughs and Special Industries)
CC:DOM:PSI:8

subject: Prepaid Telephone Cards; Application of the Communication
Excise Tax Prior to November 1, 1997

This is in reply to your request for guidance as to the application of the communications excise tax to prepaid telephone cards (PTCs) for periods prior to November 1, 1997, the effective date of §4251(d) of the Internal Revenue Code.

The taxation of PTCs was governed by the general provisions of the communications excise tax under §4251. Tax is imposed on amounts paid for local or toll telephone service; paying an amount for a PTC is paying an amount for local or toll telephone service. Thus, tax was imposed when an amount was paid for a PTC and a PTC's later use or nonuse had no §4251 consequences.

Under §4291, the tax must be collected and remitted to the Service by the person receiving payment. Accordingly, a communications service provider that received payment for a PTC prior to November 1, 1997, should have collected the 3 percent tax imposed on the amount of the payment, unless it accepted in good faith a signed statement provided by the payor certifying that the payor was purchasing the PTC for resale (see generally Rev. Rul. 74-570, 1974-2 C.B. 363), or is an exempt entity purchasing for its own use (see §4253), just as it would have when it sold any other telephone service.

If the payment was received for a PTC, tax was not collected, and the service provider does not have the payor's statement, the \$6672 penalty may be asserted against the service provider if the failure to collect the tax was willful. Whether the failure to collect was willful depends on the facts and circumstances of the individual case. Alternatively, the §4251 tax may be asserted against the person paying for the PTC.

PMTA: 00229